

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ANAHIT TATARYAN,
RONALD UGOLICK,
and BETTY WRIGHT

Appeal 2008-2266
Application 10/523,866
Technology Center 1700

Mailed: June 19, 2008

Before DALE M. SHAW, *Chief Appeals Administrator*
SHAW, *Chief Appeals Administrator*.

ORDER REMANDING TO EXAMINER

On September 18, 2006, the Examiner mailed a Final Office Action, rejecting claims 1, 2, 5-8, 10-14, 17-19 and 28-31. The grounds of rejection in the Final Rejection are:

Claims 1, 6-7 and 30-31 are rejected under 35 U.S.C. § 102(b) as being anticipated by Aoyagi, U.S. Patent No. 4,032,679.

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Claims 1-2, 6-8, 10-14, 18-19 and 30-31 are rejected under 35 U.S.C. § 102(b) as being anticipated by Stipek, U.S. Patent No. 3,914,483.

Claims 8, 10-12 are rejected under 35 U.S.C. § 102(b) as anticipated by Crawley, U.S. Patent No. 3,822,492.

Claims 5 and 17 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Stipek in view of DeMatte, U.S. Patent No. 5,985,424.

Claims 28-29 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Stipek in view of Rawlings, U.S. Patent No. 6,703,790.

On December 12, 2006, Appellants filed a Notice of Appeal. The Notice of Appeal states:

Applicant hereby appeals to the Board of Patent Appeals and Interferences from the last decision of the Examiner.

Notice of Appeal 1

On May 4, 2007, Appellants filed an Appeal Brief. In the Appeal Brief, Appellants state:

The following is a statement of the status of all the claims, pending or cancelled. Only some of the rejected claims are hereby appealed.

Claims 1, 2, 5-8, 10-14, 17-19, and 28-31 are rejected.

Claims 3, 4, 9, 15, 16, 20-27 are cancelled.

The claims on appeal are: Claims 1, 13, 28, 30, and 31.

Appeal Br. 2

On August 24, 2007, the Examiner mailed an Examiner's Answer. On page 2 of the Examiner's Answer, it states:

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

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On September 12, 2007, Appellants filed a Reply Brief. The Reply Brief only addressed certain specific arguments urged by the Examiner (Reply Br. 2).

There is no indication of record that claims 2, 5-8, 10-12, 14, 17-19 and 29 have been withdrawn or cancelled.

DISCUSSION

The Board of Patent Appeals and Interferences (Board), in *Ex parte Ghuman*, <http://www.uspto.gov/web/offices/dcom/bpai/prec/rm081175.pdf> (BPAI May 14, 2008) (precedential), held that in appeals where rejected claims are expressly withdrawn, or are implicitly withdrawn by not presenting arguments in support of patentability, the Board will remand the application to the Examiner with instructions to cancel the expressly or implicitly withdrawn claims. *See also Manual of Patent Examining Procedure* (MPEP) § 1215.03 (8th ed. Rev. 6, Sept 2007),

Accordingly, it is

ORDERED that the application is remanded to the Examiner to enter a paper cancelling claims 2, 5-8, 10-12, 14, 17-19 and 29.

Upon entry of the paper, the application should be returned to the Board for the consideration of claims 1, 13, 28, 30, and 31.

If there are any questions pertaining to this order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

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